

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS- EASTERN DIVISION**

ANITA NEDELJKOV, a U.S. Citizen,

146 Marble St, Apt 301  
Stoneham, MA 02180

Case No. 1:22-cv-10526

SRDAN NEDELJKOV, A# 214 533 779,

146 Marble St, Apt 301  
Stoneham, MA 02180,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES,

Serve: U.S. Citizenship and Immigration  
Services  
5900 Capital Gateway Dr  
Camp Springs, MD 20588

UR MENDOZA JADDOU, Director of the  
United States Citizenship and Immigration  
Services,

Serve: U.S. Citizenship and Immigration  
Services  
5900 Capital Gateway Dr  
Camp Springs, MD 20588

and,

MICHAEL MCCLEARY, Director of the  
Boston Field Office of the U.S. Citizenship and  
Immigration Services,

Serve: Michael Mcleary  
USCIS  
15 New Sudbury St.  
Boston, MA 02203

Defendants.

**COMPLAINT IN THE NATURE OF MANDAMUS ARISING FROM DEFENDANTS’  
REFUSAL TO ADJUDICATE PLAINTIFFS’ PETITION FOR ALIEN RELATIVE AND  
APPLICATION TO ADJUST STATUS**

Plaintiffs Anita Nedeljkov and Srdan Nedeljkov respectfully request a hearing before this Honorable Court to make a determination on Plaintiffs’ alien relative petition and application to adjust status, or alternatively requesting that this Honorable Court issue a writ of mandamus compelling Defendants to adjudicate Plaintiffs’ long-delayed alien relative petition and application to adjust status.

**PARTIES**

1. Plaintiff Anita Nedeljkov is a citizen of the United States.
2. Plaintiff Srdan Nedeljkov is a citizen of Serbia.
3. Plaintiffs are married and have a two-month-old child. They currently reside in Stoneham, MA.
4. Anita Nedeljkov filed an I-130 Petition for Alien Relative on behalf of the Srdan Nedeljkov on or about January 12, 2021. The Receipt Number is MSC2190666013. The couple filed an accompanying I-485 Application for Adjustment of Status on Srdan Nedeljkov’s behalf on that same date as well. Defendants assigned Receipt Number MSC2190666012 to Srdan Nedeljkov’s case.
5. The United States Citizenship and Immigration Services completed the fingerprinting and photographing of Srdan Nedeljkov as part of the processing of the pending

applications.

6. Defendants conducted an interview on the couple's I-130 application and the corresponding I-485 application for adjustment of status on August 30, 2021.

7. Since then, the Defendants have taken no action on the pending adjustment application.

8. Since Srdan Nedeljkov and Anita Nedeljkov filed the applications with The United States Citizenship and Immigration Services, they have made repeated requests to have their case finally adjudicated.

9. Despite numerous calls to The United States Citizenship and Immigration Services and their attempts to prompt movement on the case, Plaintiffs' I-130 petition and application to adjust status has remained pending far longer than is reasonable.

10. The United States Citizenship and Immigration Services has refused to adjudicate Plaintiffs' applications in accordance with applicable legal criteria.

11. Plaintiffs bring this action to compel the United States Citizenship and Immigration Services to finally adjudicate the pending applications as required by law.

12. Defendant United States Citizenship and Immigration Services (hereinafter sometimes referred to as "the USCIS") is the component of the DHS that is responsible for processing adjustment of status applications.

13. Defendant Ur Mendoza Jaddou, Director of the USCIS, is the highest ranking official within the USCIS. Jaddou is responsible for the implementation of the INA and for ensuring compliance with all applicable federal laws, including the APA. Jaddou is sued in an official capacity as an agent of the government of the United States.

14. Defendant Michael McCleary is the Director of the Boston Field Office of the USCIS, and is sued only in an official capacity, as well as any successors and assigns. The

Boston Field Office has jurisdiction over petitions for alien relative and applications for adjustment of status for immigrants in MA, where Plaintiffs reside. Mccleary is responsible for the implantation of the INA and for ensuring compliance with all applicable federal laws, including the APA. Michael Mccleary is sued in an official capacity as an agent of the government of the United States.

### **JURISDICTION AND VENUE**

15. This Honorable Court has federal question jurisdiction over this cause pursuant to 28 U.S.C. § 1331, as it raises claims under the Constitution of the United States, the INA, 8 U.S.C. § 1101 et seq., and the APA, 5 U.S.C. § 701 et seq, in conjunction with the Mandamus Act, 28 USC § 1361.

16. Venue is proper pursuant to 28 U.S.C. § 1391(e)(1) because (1) Defendants are agencies of the United States or officers or employees thereof acting in their official capacity or under color of legal authority; (2) no real property is involved in this action, and; (3) the Defendants all maintain offices within this district.

### **FIRST CLAIM FOR RELIEF** **(Agency Action Unlawfully Withheld and Unreasonably Delayed)**

For the first claim for relief against all Defendants, Plaintiffs allege and state as follows:

17. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as though fully set out herein.

18. The APA requires that “[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.” 5 U.S.C. § 555(b). Section 555(b) creates a non-discretionary duty to conclude agency matters. *Litton Microwave Cooking Prods. v. NLRB*, 949

F.2d 249, 253 (8th Cir. 1991). A violation of this duty is a sufficient basis for mandamus relief.

19. The APA permits this Honorable Court to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

20. Plaintiffs allege that the applications have been in administrative processing beyond a reasonable time period for completing administrative processing of the petition for alien relative and the adjustment of status application.

21. The combined delay and failure to act on Plaintiffs’ petition for alien relative and adjustment of status application is attributable to the failure of Defendants to adhere to their legal duty to avoid unreasonable delays under the INA and the applicable rules and regulations.

22. There are no alternative adequate or reasonable forms of relief available to Plaintiffs.

23. Plaintiffs have exhausted all available administrative remedies in pursuit of a resolution of this matter, including repeatedly requesting the processing of the case with the USCIS. Furthermore, Plaintiffs have sent letters to Senator Elizabeth Warren. All to no avail.

**SECOND CLAIM FOR RELIEF**  
**(Violation of Right to Due Process of Law)**

For the second claim for relief against all Defendants, Plaintiffs allege and state as follows:

24. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as though fully set out herein.

25. The right to fundamental fairness in administrative adjudication is protected by the Due Process Clause of the Fifth Amendment to the United States Constitution. Plaintiffs may seek redress in this Court for Defendants’ combined failures to provide a reasonable and

just framework of adjudication in accordance with applicable law.

26. The combined delay and failure to act by Defendants has violated the due process rights of Plaintiffs.

27. The combined delay and failure to act by Defendants has irrevocably harmed Srdan Nedeljkov in the denial of an opportunity to claim lawful permanent resident status, as well as the ability to sponsor family members for residence in the U.S. and in various other ways. Furthermore, the uncertainty that this delay has caused, has affected Plaintiffs' expectations of family life together in the U.S.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs Anita Nedeljkov and Srdan Nedeljkov requests the following relief:

1. That this Honorable Court assume jurisdiction over this action;
2. That this Honorable Court issue a writ of mandamus compelling Defendants to promptly complete all processing of Anita Nedeljkov's and Srdan Nedeljkov's I-130 alien relative petition.
3. That this Honorable Court issue a writ of mandamus compelling Defendants to promptly complete all processing of Srdan Nedeljkov's application to adjust status within sixty days;
4. That this Honorable Court take jurisdiction of this matter and adjudicate Srdan Nedeljkov's application to adjust status pursuant to this Court's declaratory judgment authority;
5. That this Honorable Court issue a writ of mandamus compelling Defendants to issue a green card to Srdan Nedeljkov;
6. That this Honorable Court issue a writ of mandamus compelling Defendants to explain to Plaintiffs the cause and nature of the delay and inform Plaintiffs of any action they

may take to accelerate processing of the application to adjust status;

7. Attorney's fees, legal interests, and costs expended herein, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412;

8. Such other and further relief as this Honorable Court may deem just and proper.

**RESPECTFULLY SUBMITTED**  
**April 11, 2022**

**/s/Michael A. DelSignore**

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**/s/ James O. Hacking, III**

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**ATTORNEYS FOR PLAINTIFFS**  
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